

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MARK A. SMITH

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

Frank Allevato # 2939Det. Famiano # 32John Does #1, #2 and #3

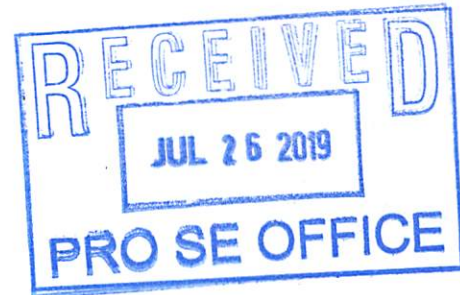
(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

2d AMENDED COMPLAINT

Complaint for Violation of Civil Rights
(Non-Prisoner Complaint)

Case No. 17 CV 6535
(to be filled in by the Clerk's Office)

Jury Trial: ☒ Yes ☐ No
(check one)

**NOTICE**

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed *in forma pauperis*.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>MARK A. SMITH</u>
Street Address	<u>223 Ten Eyck Walk</u>
City and County	<u>Brooklyn</u>
State and Zip Code	<u>NY 11206</u>
Telephone Number	<u>413 507 8730</u>
E-mail Address	<u>MARK7182004@yahoo.com</u>

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	<u>Frank Allegrato</u>
Job or Title (if known)	<u>Police Officer, Bklyn North Narcotics</u>
Street Address	<u></u>
City and County	<u>NY, Kings</u>
State and Zip Code	<u>N.Y.</u>
Telephone Number	<u></u>
E-mail Address (if known)	<u></u>

Defendant No. 2

Name Famiano, Shield # 32
Job or Title Detective
(if known)
Street Address Brooklyn North Narcotics
City and County NY Kings
State and Zip Code NY
Telephone Number _____
E-mail Address _____
(if known)

Defendant No. 3

Name JOHN DOE
Job or Title Police officer
(if known)
Street Address Brooklyn North Narcotics
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address _____
(if known)

Defendant No. 4

Name John Doe
Job or Title Police officer
(if known)
Street Address Brooklyn North Narcotics
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address _____
(if known)

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☒ State or local officials (a § 1983 claim)
☐ Federal officials (a *Bivens* claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Plaintiffs 4th, 8th and 14th Amend,

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Frank Allevato, acting under the color of Law, at approx 12:45 PM on February 6th, 2015 did knowingly and willingly and with a total disregard for the truth did falsely state in an affidavit

(cont.)

For a search warrant that he observed Marijuana in Plaintiff's residence after following a trail (non-existent) of blood into Plaintiff's residence an hour after Plaintiff was shot in the vestibule area of his building residence. After giving knowing false statements to a Judge of the Kings County Court, a search warrant was issued.

On November 18, 2015 P.O. Frank Allevalo, Shield # 2939, Command 57 acting under the color of law and with a willful disregard for the truth did testify before an impaneled Grand Jury that he executed a legal and valid search warrant that was based on first hand and truthful information and recovered marijuana from Plaintiff's residence. Said Grand Jury returned an indictment against Plaintiff (People v. Smith, Ind. # 1174/15).

On February 5, 2015 and November 18, 2015 Police Officer Frank Allevalo, Shield # 2939, Command 57, acting under the color of law did knowingly, willingly and with a total disregard for the truth did perjure himself in violation of New York State Penal Law Sec. 210.15

(cont.)

Cont
Sec 0

On February 5, 2015 Det. Famiano, Shield #32, Brooklyn North Narcotics, acting under the color of law did knowingly and willfully conspire with defendant Frank Allevato to secure a search warrant to search Plaintiff's residence by remaining silent as to sworn facts attested to in the search warrant affidavit, of defendant Frank Allevato, that he knew to be false

On November 18, 2015 Det. Famiano, Shield #32, Brooklyn North Narcotics, acting under the color of law did knowingly and willfully conspire with defendant Frank Allevato to secure a Kings County Grand Jury Indictment by providing supportive testimony that the search warrant executed on Plaintiff's residence was based upon truthful statements to the Warrant Issuing Court when he knew that the search warrant statements were false

On February 5, 2015 and November 18, 2015 Det. Famiano, Shield #32, Brooklyn North Narcotics did commit the criminal offense of conspiracy in the fourth degree (P.L. § 105.10)

Cont. ③
See D.

While acting under the color of Law when he knowingly and with a disregard for the truth allowed defendant Frank Allevato to secure a search warrant that he knew was based upon perjured statements of material fact to the warrant issuing court.

Det. Farniano, Shield # 32, further conspired with defendant Frank Allevato to not advise the impaneled Grand Jury that the search warrant used to search Plaintiff's residence was secured upon perjured statements to the warrant issuing court in violation of P.L. § 105.10.

Defendant Joy Kievras, an Assistant District Attorney of Kings County, New York did violate Plaintiff's 4th and 8th Amendment rights when she prosecuted plaintiff based on evidence she should have known was false and misleading.

Defendant City of New York is the Employer for each of the aforementioned co-defendants and as such failed to properly train and supervise each defendant.

cont.
Sec. 10

4

On November 1, 2017 at approx. 12:00 PM Police officer Frank Allevalo of Brooklyn North Narcotics along with 3 John Doe officers approached plaintiffs parked 2009 Nissan Altima in front of 200 MavJer Street, Brooklyn, NY 11206 and opened the drivers side door. Upon opening the drivers side door Officer Allevalo conducted a search of plaintiffs drivers side door arm rest/window control panel and found 1 bag of Marijuana located under plaintiffs pack of cigarettes. Said illegal search and subsequent arrest of plaintiff occurred 5 days after the dismissal of a criminal court action for which defendant Allevalo was the arresting officer.

In filing the criminal complaint defendant alleged that the plaintiffs car door was open and that the Marijuana was in plain view and that said reason for approaching the plaintiffs parked vehicle was due to plaintiffs temporary car tag was not properly affixed to the rear window.

At the time of illegally searching plaintiffs car and subsequently arresting him for possession of Narcotics (i.e. PCP) the defendant Allevalo and the remaining 3 John Doe officers knew that there was no probable cause to stop and search plaintiffs car prior to his being arrested on false charges and said arrest was made in retaliation for the dismissal of criminal charges against plaintiff, 5 days earlier, previously brought on by defendant Allevalo.

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

The events giving rise to Plaintiff's claims occurred at 223 Ten Eyck Walk, Apt # 1A, Kings County Criminal Court and Kings County Grand Jury and 200 Mawter Street, Brooklyn, NY

- B. What date and approximate time did the events giving rise to your claim(s) occur?

On February 5, 2015 at approx. 12:45 P.M.
November 18, 2015, November 1, 2017 at approx 12:00 PM

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

On February 5, 2015 at approx 12:45 PM defendant Allevato and defendant Famiano illegally searched Plaintiff's residence without a search warrant. Subsequently defendant Allevato knowingly and with a total disregard for the truth falsely told a Criminal Court Judge that he observed marijuana in Plaintiff's residence after following a trail of blood into Plaintiff's residence for the purpose of a search warrant. At the time of applying for the search warrant defendant Famiano remained silent as to the truth of the material facts in the search warrant affidavit of defendant Allevato. On November 18, 2015 defendant's Allevato and Famiano both failed to advise the Kings County Grand Jury that the statements made in the search warrant affidavit were false. Kings County ADA Jay Kienas prosecuted the Plaintiff based on false statements and testimony and the City of New York employed all the defendants

On November 1, 2017 at approx 12:00PM defendant Allavato and John Does #1, #2 and #3 knowingly and intentionally stopped, illegally searched and falsely arrested plaintiff in retaliation for the dismissal of criminal court charges previously brought against plaintiff by defendant Allavato in 2015

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Plaintiff suffered anxiety and mild depression as a result of the perkinous statements and testimony of defendants Allevaro and Famiano and the malicious prosecution of plaintiff by the Kings County District Attorney's Office. Plaintiff further suffered physical and emotional duress on November 1, 2017 due to the false arrest of plaintiff by defendant Allevaro

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Plaintiff seeks compensatory damages in the amount Fifteen Million (\$15,000,000) dollars for the violation of Plaintiffs 4th, 8th and 14th Amendment rights by the defendants and Ten Million (\$10,000,000) dollars in punitive damages from defendants Allevaro and Famiano for the knowing perkinous statements before the warrant issuing court and knowingly withholding of Material facts before the impaneled Grand Jury that the statements supplied in the search warrant affidavit were false and for false arrest on November 1, 2017 by defendant Allevaro

VI. Certification and Closing


Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: July 25, 2019

Signature of Plaintiff

A handwritten signature in blue ink, appearing to read "Mark A. Smith", written over a horizontal line.

Printed Name of Plaintiff

MARK A. Smith